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Tara A. Gellman

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NOTES & COMMENTS

The Blurred Line Between Aiding Progress and Sanctioning Abuse: United States Appropriations, the UNFPA and Family Planning in the P.R.C.

INTRODUCTION

In 1979, the People's Republic of China adopted its one-child-per-family program.¹ For over a decade, the United States Congress has shown great concern regarding the involuntary and highly coercive measures by which China's program is implemented, even as it has moved beyond a strict one-child policy.² The U.S. contributes to international population control and family planning programs by appropriating funds to international organizations such as the UNFPA (United Nations Population Fund) and USAID (U.S. Agency for International Development).³ The latter may in turn earmark funds for the UNFPA.⁴ The UNFPA contributes funds to population/family planning programs abroad, which the organiza-

¹ See Xiaorong Li, *License to Coerce: Violence Against Women, State Responsibility, and Legal Failure in China's Family Planning Program*, 8 YALE J.L. & FEMINISM 145, 147 (1996).

² See U.S. Dept. of State China Country Report on Human Rights Practices for 2000, Bureau of Democracy, Human Rights and Labor (2001) [hereinafter State Dept. Report 2001], available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eap/index.cfm?docid=684>. ("There were reports that, due to the success of the one-child policy in urban areas, the Government was beginning to relax its policies in the cities. In May 1999, the official press reported that although couples in Beijing were still limited to one child, effective October 1, 1999, they would no longer be required to obtain a family planning certificate before having their child. At year's end, the effect of this change was unknown. Such policies reportedly also have been adopted in some other areas Outside the cities, exceptions to the "one-child policy" are becoming the norm. The average number of children per family in rural areas is slightly over two. Although rules can vary somewhat by Province, in rural areas, couples generally are allowed to have a second child if the first is a girl, an exception that takes into account both the demands of farm labor and the traditional preference for boys. Families whose first child is disabled also are allowed to have another child. Ethnic minorities . . . are subject to less stringent population controls.").

³ See, e.g., *infra* note 167.

⁴ See, e.g., *infra* note 154, at 6.

tion plans, implements, and oversees with the cooperation of national and local governments. This includes programs in the People's Republic of China.

The debate over appropriating U.S. funds to programs abroad, and especially in China, has led to and continues to create a series of decisions, statutory amendments, acts and laws limiting, and at times halting, the availability of these funds. This debate centers on the concern over human rights violations committed within the programs.⁵

This note discusses the trend in P.R.C. programs, international standards of human rights, legislative trends, and the United States budget for fiscal years 2000 and 2001 as they apply to family planning programs. Specifically, this discussion shows why Congress should condition funding of these programs based on assurances of compliance with human rights standards. Part I presents an overview of the P.R.C. programs. Part II reviews internationally accepted standards of human rights concerning reproduction and population control, as well as China's violations of these rights. Part III describes UNFPA funding of the P.R.C.'s programs, emphasizing their latest 4-year program. Part IV discusses the legislative trend since 1985 of limiting or halting funding to the programs, and the current state of the federal budget regarding these appropriations. Part V discusses the global gag rule and the necessity of its removal. Part VI considers recently proposed legislation regarding funding family planning. Finally, the conclusion proposes a possible solution to the family planning dilemma in the face of both the continuing need for assistance and the continued existence of human rights abuses.

⁵ See 143 CONG. REC. H10139-04 (daily ed. Nov. 6, 1997). In the Proceedings and Debates of the first session of the 105th Congress, several members of the House of Representatives spoke in support of passing the "Forced Abortion Condemnation Act," which will not be discussed herein. However, the comments of these Representatives illustrates this focus on human rights, rather than pro-life or pro-choice, concerns. Congressman Abercrombie pointed to the fact that "China is a signatory to various international covenants and treaties, including the Universal Declaration on Human Rights that is in the purview of the United Nations. Everything that we are doing. . . is a direct reflection of treaty and covenant obligations that we have as a nation, that China has as a nation, and that we as individuals surely express." *Id.* More pointedly, Congressman Pitts of Pennsylvania stated "[forced] abortions are outright human rights abuses. I do not believe that this is a pro-life or pro-choice issue. This is a human issue. It is an issue of blatant government abuse. The United States must not in any way be a part of it." *Id.*

I. FAMILY PLANNING IN THE P.R.C.

"While opposed to the use of coercive measures, [the population and family program of China] puts more emphasis on the integrated approach of carrying out publicity and education campaigns, [and] providing quality services in reproductive health and family planning . . ."

—Wang Zhongyu⁶

Overview

Deng Xiaoping announced the promotion of the one-child-per-family population policy in China in 1979.⁷ A series of laws and directives soon followed, unquestionably making the national policy both official and enforceable. The 1980 Marriage Law made marriage illegal for men under twenty-two or women under twenty, resulting in a plan of "late marriage and late birth."⁸ The 1982 joint directive of the Central Committee of the Communist Party and the State Council "order[ed] the provincial governments to adopt strict methods of policy implementation."⁹ In 1991, a national joint directive was issued stating in part, "the lower-level planned-birth workers must carry out propaganda . . . [to prevent] local offices from relaxing their planned-birth work . . . [and] [persist] in preventing early marriage and early birth, multiple births, and extra-plan pregnancies and births."¹⁰ The main elements of the na-

⁶ Statement by H.E. Mr. Wang Zhongyu, State Councillor and Secretary-General of the State Council of the People's Republic of China at the Special Session of the United Nations General Assembly on the Review and Appraisal of the Implementation of the *Programme of Action* of the International Conference on Population and Development, New York, June 30, 1999, *on file with author*.

⁷ See Li, *supra* note 1.

⁸ See *id.* at 149, citing Zhonghua Renmin Gongheguo Hunyinfa [Marriage Law of the P.R.C.] art. 5 (1980), available in LEXIS, Intlaw Library, CHINAL File.

⁹ *Id.* at 149, citing Zhonggong Zhongyang Guowuyuan Jinyibu Zuohao Jihua Shengyu Gongzuo Di Zhishi [Directive by the Central Communist Party Committee and the State Council Regarding Further Implementing Family Planning], (adopted Feb. 9, 1982), Zhonguo Renmin Gongheguo Falu Fagui Quanshu [The Complete Book of Laws and Legal Regulations in the P.R.C.] at 909, n.13.

¹⁰ *Forced Abortion and Sterilization in China: The View From Inside: Hearing Before the Subcomm. of Int'l Operations and Human Rights of the Comm. on Int'l Relations House of Representatives*, 105th Cong. 2d Sess. (June 10, 1998) [hereinafter *The View From Inside*] at 77 [Chinese Communist Party Central Committee

tional policy; the system of permits and notices distributed to women and couples; the methods of forced abortion, involuntary sterilization, and involuntary birth control; and the use of incentives and punishments, are found consistently throughout China.

Official Notices, Permits, and Other Requirements

Population control and family planning is enforced through a policy that includes the issuance of permits and notices that serve to control everything from the acts of conception and childbirth to the regulation of a woman's menstrual cycle and her use of contraception. In order to have a child, a couple must be married and must be issued a "birth-allowed certificate,"¹¹ or "family planning certificate."¹² If a couple does not qualify to have a child at a particular time, they will receive, for example, a "birth-not-allowed notice"¹³ for a first child, or a "no-more-birth-allowed notice"¹⁴ for a second or third child.¹⁵ During the period in which a woman is prohibited from having a child, she is issued more notices aimed at enforcing measures equally as intrusive as the permission or prohibition of conception and birth.¹⁶

Whereas in the United States the use of contraception is an individual and voluntary decision, in China the decision is made by officials. In order to ensure that women of childbearing age do not

and the National Congress on the Decision to Intensify Planned-Birth Work and Strictly Control Population Growth].

¹¹ See *The View From Inside*, *supra* note 10 at 30 (statement of Gao Xiao Duan, Planned-Birth Officer).

¹² See U.S. Dept. of State China Country Report on Human Rights Practices for 1998, Bureau of Democracy, Human Rights, and Labor (1999) [hereinafter State Dept. Report 1999], available at http://www.state.gov/www/global/human_rights/1998hrp_report/china.html. But see State Dept. Report 2001, *supra* note 2: It is important to note that some regions seem to be letting up on these strict practices. The State Department in its latest human rights report states that "Zhejiang Province reportedly has abandoned 'birth quotas' of county-by-county permissible births each year, and other counties have set up 'whispering rooms' in family planning offices where women can talk privately with doctors about their birth control options. Other jurisdictions, such as Mingian village in Yandu County, have reportedly followed the earlier example of Beijing and other cities, abolishing birth permits and allowing couples to decide on their own when to have a baby." *Id.*

¹³ See State Dept. Report 1999, *supra* note 12.

¹⁴ See *The View From Inside*, *supra* note 10, at 40 [No-More-Birth-Allowed Notice for Villagers].

¹⁵ See *id.* See also State Dept. Report 1999, *supra* note 12, at 31.

¹⁶ See statement of Gao Xiao Duan, *supra* note 11, at 31.

conceive out of plan, notices dictate birth control measures and schedule mandatory examinations.¹⁷ The "Notice of IUD and Pregnancy Check," for example, tells a woman that she, "[has] to come to the village committee . . . [b]ring [her] IUD or pregnancy certificate, personal I.D., marriage certificate, and registration to accept (IUD, Pregnancy) inspection."¹⁸

In some areas, policy implementation brings family planning requirements into the workplace.¹⁹ "Many factories around the country hang up blackboards listing each female worker's contraceptive measure and the day her period arrives. The women are required to place a check mark next to their names each month after their menstruation begins. If she fails to report on schedule, her employer will be asked why. The woman is then ordered to take a pregnancy test."²⁰ Policy procedures are sometimes directed to employers to carry out in the event of violations, further enmeshing the workplace into the population control scheme.²¹ As disconcerting as this is, the issue of greater importance is what results from an individual or a couple's failure to comply with China's policy.

¹⁷ See *id.*

¹⁸ See *The View From Inside*, *supra* note 10, at 42 [Notice of IUD and Pregnancy Check, Yonghe Town Planned Birth Office, March 7, 1996].

¹⁹ See Ron Redmond, *U.N. Official Warns Against Forced Abortions*, UNITED PRESS INT'L, June 10, 1986, AM cycle, available in LEXIS, News Library, Wire Service Stories File ("Dr. Chan Ayshian of the Shenzhen People's Hospital told the [South China Morning Post] newspaper that the only pregnancies allowed to reach full term are those approved by a couple's 'work unit.' She said newly married couples are 'given birth control directives' by their work units, which must also approve in advance any plans to have children.").

²⁰ Michael Weisskopf, *Abortion Policy Tears at China's Society*, WASH. POST, Jan. 7, 1985, at A1, reprinted in 131 CONG. REC. H5218-01 (daily ed. June 27, 1985) [hereinafter Weisskopf].

²¹ See *The View From Inside*, *supra* note 10, at 81 [Fujian Province Planned-Birth Regulators: Fujian Province Seventh Session of the People's Congress Passed at the Second Meeting of the Everyday Affairs Committee, April 29, 1988] ("For those who violate planned-birth regulations by giving birth too early or give birth before the stipulated interval between children, for one to three years after the punishment begins; for extra-planned births, seven years after the punishment begins: do not issue bonuses, do not change worker status from contract to permanent employee, do not issue promotions, do not increase job (salary) levels, do not evaluate them as progressive workers, do not issue a salary during maternity leave, do not provide health insurance. . . Each husband and wife with extra-plan births must also be demoted one level in salary and be punished by other administrative laws").

Forced Abortions

If a woman becomes pregnant out-of-plan, she is either forced to abort the child, or is coerced into the procedure. Officials working for planned birth offices are empowered to apprehend women who violate the planned birth policies and force the abortion of the child without approval from any outside agency.²² Pregnant women are taken to a center where the procedure is immediately carried out.²³ Recently, Chinese government officials unveiled their latest addition to this policy, the "mobile abortion clinic."²⁴ Delegates from the International Union for the Scientific Study of Population were able to inspect one of the vehicles, including the body clamps inside.²⁵

Late term abortions are not prohibited in provincial regulations.²⁶ For example, in the Jilin Family Planning Regulation, there is no mention of what the latest gestation period is during which an abortion can be performed.²⁷ Thus, officials force the termination of out-of-plan pregnancies no matter how far along, often leading to the abortion of nine-month-old fetuses.²⁸ As Gao Xiao Duan, the former administrator of a planned birth control office in the P.R.C., recently testified before Congress:

once I found a woman who was nine months pregnant, but did not have a birth-allowed certificate. According to the policy, she was forced to undergo an induced abortion. In the operating room, I saw the child's lips were moving and how its arms and legs were also moving. The doctor injected poison into its skull and the child dies and it was thrown into the trash-can.²⁹

²² See statement of Gao Xiao Duan, *supra*, note 11, at 32. ("[t]o catch violators, our planned birth office does not need consent by the courts, the judicial departments, or the public security departments. There are no paperwork formalities").

²³ See *The View From Inside*, *supra* note 10, at 9 (testimony of Gao Xiao Duan, Former Administrator, Planned Birth Office, People's Republic of China).

²⁴ 145 CONG. REC. H1510-02 (daily ed. March 23, 1999).

²⁵ See *id.* (" 'I think the need for body clamps speaks for itself,' said Steven Mosher, President of the Population Research Institute. 'Women doing something voluntarily do not need to be held down with clamps.' "). *Id.*

²⁶ See Li, *supra* note 1, at 163; statement of Gao Xiao Duan, *supra* note 11, at 34.

²⁷ See Li, *supra* note 1, at 163.

²⁸ See statement of Gao Xiao Duan, *supra* note 11, at 34.

²⁹ *Id.*

She further testified that approximately one third of the abortions in Yonghe Town, Jinjiang Municipality, in Fujian Province, were performed after the first trimester.³⁰

Sterilization and Birth Control

Other methods used to ensure the success of population control and family planning in China are those of sterilization and involuntary birth control. Sterilizations are performed within the program for several reasons. One spouse may be sterilized, for example, if the couple has already had two children.³¹ Women who have out-of-plan births will be searched for by officials and forcefully sterilized.³² Often, they are sterilized immediately following a forced abortion.³³ "The focus of the crackdown [on births in China] has shifted to the more efficient method of compulsory, organized sterilization, so that women do not have the option of becoming pregnant again."³⁴ Equally intrusive and often unsafe is the enforced measure of involuntary birth control.

The birth control method abandoned by many women in the United States years ago is that which officials force upon women in China; namely, the insertion of an intrauterine loop or implant; an IUD.³⁵ Whereas most of these women undergo the procedure after

³⁰ See testimony of Gao Xiao Duan, *supra* note 23, at 11.

³¹ See *The View From Inside*, *supra* note 10, at 107 [Planned-Birth Propaganda Material, Decisions on Intensifying Implementation of Goals of Planned-Birth Work, Jan. 1, 1996].

³² See testimony of Gao Xiao Duan, *supra* note 23, at 12.

³³ See Li, *supra* note 1, at 172.

³⁴ Nicholas D. Kristof, *China's Crackdown on Births: A Stunning, And Harsh, Success*, N.Y. TIMES, April 25, 1993, §1, at 1, reprinted in 139 CONG. REC. E1093-01 (1993).

³⁵ See U.S. Dept. of State China Country Report on Human Rights Practices for 1999, Bureau of Democracy, Human Rights, and Labor (2000) [hereinafter State Dept. Rpt. 2000], available at http://www.state.gov/www/global/human_rights/1999_hrp_report/china.html ("[according] to local regulations in at least one province, women who do not qualify for a Family Planning Certificate that allows them to have a child must use an intrauterine loop or implant"). See also *The View From Inside*, *supra* note 10 at 107 [Planned-Birth Propaganda Material — Decisions on Intensifying Implementation of Goals of Planned-Birth Work, Yonghe Town Planned-Birth Society, Yonghe Town Planned-Birth Office, January 1, 1996] ("[t]o resolutely put an end to extra-plan second births [all] women of child-bearing age who give birth to a first child must undergo intrauterine device insertion surgeries within two months. Those who fail to do so for more than four months shall unexceptionally be sterilized A woman to be followed-up for intrauterine device reliability and pregnancy tests shall be checked four times annually, the

receiving a notice offering them little choice,³⁶ "[in] some city hospitals, doctors automatically implant (IUDs) after a woman gives birth, often without informing the women or seeking prior consent, according to a [Beijing] gynecologist."³⁷ Not only do women have to undergo the involuntary insertion of these devices, but they are forced to undergo examinations up to four or even six times a year to check on their placement.³⁸

Incentives to Carry out Policy

The system of incentives and rewards utilized by China's program can perhaps partially illuminate its "success" in the face of its inherent human rights abuses. Three main groups of people are motivated by incentives — citizen-informants, officials/cadres, and the women or couples themselves.

Informants are ordinary people who discover out-of-plan births and pregnancies and alert officials.³⁹ The informant system is quite efficient, since birth-allowed and birth-not-allowed certificates are publicly posted for anyone to read.⁴⁰ Those who read the postings and know that a named individual is pregnant or has had a child out-of-plan will be aware of the policy violation. They can then choose to inform officials, either directly or indirectly by "[dropping] their accusations" in an "informer's box," such as the

schedule being January, April, July and October respectively; all women of child-bearing age who fail to present themselves for intrauterine device reliability and pregnancy tests two times in succession shall unexceptionally be sterilized").

³⁶ See *The View From Inside*, *supra* note 10, at 43 [Notice of Birth Control Implementation, Yonghe Town Planned Birth Office].

³⁷ Weisskopf, *supra* note 20.

³⁸ See statement of Gao Xiao Duan, *supra* note 17; Notice of IUD and Pregnancy Check, *supra* note 18. See also State Dept. Report 2001, *supra* note 2 ("[a]ccording to local regulations in at least one province, women who do not qualify for a Family Planning Certificate . . . must use an intrauterine device (IUD) or implant. The regulations further require that women who use an IUD undergo quarterly exams to ensure that it remains properly in place. If a couple has two children, those regulations require that either the man or woman undergo sterilization.") (emphasis added).

³⁹ See *The View From Inside*, *supra* note 10, at 37 (Attachment 2B to the statement of Gao Xiao Duan, case of Chen Li-May, victim of family planning policy) (Chen Li-May became pregnant without either a marriage or a birth-allowed certificate. She went into exile in order to have her child, yet in her ninth month of pregnancy, somebody informed officials about her. As a result, she was taken by officials to Jinjiang Municipality Planned Birth Induced Delivery Center where her child's birth was induced, only to be killed).

⁴⁰ See statement of Gao Xiao Duan, *supra* note 11, at 31.

one outside of the Yonghe Town Planned Birth Office.⁴¹ An example of how such a system operates is the Quanzhou City Planned-birth Leadership Group "Circular Notice on Setting up an Informing System based on Rewards," dated February 23, 1998, which states in part:

[each] township (neighborhood office) planned birth office, village (household) committee must establish an informing box and informing telephone line to facilitate informants Those who report a case of extra-plan pregnancy and carry out remedying measures will be awarded 400 yuan Those who report a case of false reporting or failure to report a birth since 1996 will be awarded 300 yuan.⁴²

Officials are offered incentives to carry out policy strictly and vigorously. The national joint directive known as the "1991 Decision on Stepping Up Family Planning Work and Strictly Controlling Population Growth," for example, provides incentives by stating that "the performance of party leaders and government officials [at each level] is assessed on the basis of their 'achievement' of the allocated birth quotas for their areas."⁴³ Bonuses and work subsidies are also paid to cadres who successfully enforce program policies in the area under their supervision.⁴⁴

⁴¹ See *The View From Inside*, *supra* note 10, at 7 (statement of Nicole Hess, The Laogai Research Foundation).

⁴² See *The View From Inside*, *supra* note 10, at 116 [Circular Notice on Setting up an Informing System Based on Rewards Feb. 23, 1998].

⁴³ See Li, *supra* note 1, at 155, citing Zhonggong Zhongyang. Guowuyuan Guanyu Jiaqiang Jihua Shengyu Guong Zuo Yang Kongzhi Kenkou Zengzhang de Juedeng [Decision on Stepping up Family Planning Work and Strictly Controlling Population Growth], Zhonghua Renmin Gongheguo Falu Fugui Quanshu [The Complete Book of laws and legal Regulations in the P.R.C.] at 912 (1991), n.18.

⁴⁴ See *The View From Inside*, *supra* note 10, at 69 (testimony of Harry Hondga Wu, Executive Director, The Laogai Research Foundation) [hereinafter Harry Wu]. "Every planned-birth cadre is granted 'work subsidies:' ¥2.00 multiplied by the total number of residents in the village. The more residents they manage, the greater the pay subsidy they get. Should their superiors conduct raids in their village and find their planned-birth indexes qualified and their plan fulfilled, they are granted bonuses, otherwise they are imposed penalites". *Id.*

Some of the incentives offered to couples to stay within the policies of the program are too great to turn down.⁴⁵ For example, couples may receive monetary payment, or "preferential medical and educational benefits."⁴⁶ Instead of money, couples in rural areas may receive rewards such as preferential hiring or land allocation.⁴⁷ The 1988 Fujian Province Planned-Birth Regulations states, "all other conditions being equal, sole children enjoy the privilege to go to kindergartens and schools, to be employed, to enjoy medical treatment, to be allotted living quarters, etc."⁴⁸ The very things people elsewhere see as basic rights are considered "privileges" and used as incentives for compliance.

The threat of punishment serves as a negative incentive.⁴⁹ For officials and cadres, "[failure] to keep the number of births within the quota could mean demotion, stiff fines, or the loss of bonuses."⁵⁰ Different fines may be meted out for specific violations

⁴⁵ See State Dept. Report 2000, *supra* note 35 ("Rewards for couples who adhere to family planning policies include monthly stipends and preferential medical and educational benefits. In June the press in Guangzhou reported that Yangchun city had issued 'certificates of preferential treatment' to 15,000 one-child families, and that city authorities purchased 'old-age insurance' for 6,230 families to reward them for having only one child").

⁴⁶ State Dept. Report 2001, *supra* note 2.

⁴⁷ See *The View From Inside*, *supra* note 10, at 44 [Fujian Province Planned-Birth Regulations].

⁴⁸ *Id.*

⁴⁹ See *The View From Inside*, *supra* note 10, at 112-13 [Shanqian Village, Yonghe Town Village Cadres' Letter of Responsibility in Planned-Birth Work for 1996] ("[v]illage cadres in areas of responsibility which fail to attain 100% planned-birth rate, fail to attain 100% rate of twin checks, where cases of early marriage and early birth are discovered, must explain reasons for failure to village Party secretary and village head, must submit a written self-criticism to the village's two committees, and must improve their performance within a set time . . . Village cadres who fail to perform planned-birth work vigorously in the third quarter and cause unfavorable consequences in their areas of responsibility cannot be candidates for next-term village Party branches and village committees.").

⁵⁰ Li, *Supra* note 1, at 155, *citing* Zhonggong Zhongyang. Guowuyuan Guanyu Jiaqiang Jihua Shengyu Guong Zuo Yangge Kongzhi Kenkou Zengzhang de Juedeng [Decision on Stepping up Family Planning Work and Strictly Controlling Population Growth], Zhonghua Renmin Gongheguo Falu Fugui Quanshu [The Complete Book of Laws and Legal Regulations in the P.R.C.] 911-12 (1991), n.18. See also Harry Wu, *supra* note 44 ("for each case of early marriage discovered in a cadre's area of responsibility he or she is fined ¥200.00. For each case of a woman failing to present herself for device-reliability or pregnancy checking, the cadre is fined ¥10.00. For each case of discovered extra-plan birth, he or she is fined ¥100.00. Besides, the official is subject to additional Party and administrative disciplinary sanctions").

by officials, such as selling certificates allowing births or "altering planned-birth statistics figures."⁵¹ Doctors who violate the plan are also subject to punishment. If a doctor removes an IUD that is causing a woman serious medical problems without the express permission of an official, he may be disciplined administratively, fined, or even criminally punished.⁵² By far the worst punishments are those that are shockingly imposed on women, and even their families, when the program's policies are violated, which will be discussed in Part II.

*Health Effects of Forced Abortions, Sterilization and
IUD Insertion*

One of the tragedies of the P.R.C.'s policies is the resultant damage to the health of women who undergo these abortions, sterilizations, and intrauterine device insertions. It is always possible that forced abortions, especially late-term ones, will cause irreversible damage to the reproductive system.⁵³ Thus, even if a woman who has undergone such a procedure is later issued a birth-allowed certificate, conception may be impossible.⁵⁴ Officials force women to undergo these procedures even when doctors declare them unsafe, which can have crippling results. For example, in Ningxiang County, a woman who was apprehended by an "early birth shock brigade"⁵⁵ was declared by the doctor to be "too frail to undergo

⁵¹ See Fujian Province Planned-Birth Regulations, *supra* note 47.

⁵² See Li, *supra* note 1, at 171, citing Guowuyuan Guanyu Xiada Shinianguihua he "Bawu" Jihua Fengdigu enkou Zhibiao de Tongzhi [Notification by the State Council Regarding the Ten-Year Plan and the Eighth Five-Year Plan Regional Birth Quota] (adopted Jan. 6, 1992), *Zhonghua Renmin Gongheguo Falu Fagui Quanshu* [The Complete Book of Laws and Legal Regulations of the P.R.C.] article 32, and the Jilin Family Planning Regulations, n.36.

⁵³ See *The View From Inside*, *supra* note 10, at 37 (case of Chen Li-May, a woman who underwent a forced abortion in the ninth month of pregnancy. When she was later issued a birth-allowed-certificate, doctors said she could never conceive again).

⁵⁴ See *id.*

⁵⁵ See Kristoff, *supra* note 34 ("[t]he report about Ms. Li, who is crippled after the induced labor, is an example of how local officials became carried away in the current crackdown. The three-page account, classified as 'secret,' describes how Ningxiang County decreed in September that women should normally be allowed to give birth only after reaching the age of 24. The problem for local authorities was that they had already given some women 'pregnancy permits' even though they were under 24. Some of these women were pregnant. Nine of them — including Ms. Li — would not give birth until 1993, the first full year in which

induced labor.”⁵⁶ The officials “ordered him to proceed. She bled severely, fell unconscious, and almost died along with the baby. Her family took her to the township clinic, where her life was saved. Now she has returned home, but the report says she is crippled.”⁵⁷

Women who attend ordered exams are “stood before decades-old equipment to endure the kind of fluoroscopic examination discouraged in the West for fear of causing radiation damage to ovaries or fetuses.”⁵⁸ Women are often sterilized immediately following an abortion or the birth of a child, even though it is not safe to do so.⁵⁹ Doctors may not remove IUDs from patients without official consent, even in cases of medical complication.⁶⁰ Documentation backs the conclusion that severe psychological damage can also result from forced abortions.⁶¹

It is clear that this program, touted as one of education and improvement in reproductive health, is not consistent with the story presented to the world. The issues discussed thus far should cause great concern, particularly in light of the consistency with which the policies of the P.R.C. program violate internationally accepted standards of human rights.

II. INTERNATIONAL STANDARDS OF HUMAN AND REPRODUCTIVE RIGHTS AND VIOLATIONS BY THE P.R.C. WITHIN POPULATION AND FAMILY PLANNING PROGRAMS

International Standards – an Overview

The Charter of the United Nations states in Article I that, “the purpose of the United Nations are . . . to achieve international co-operation in . . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to

the new age limit took effect. ‘Some . . . officials feared that they would be fined . . . or would not receive their bonuses,’ the report declares. So at the end of December the family planning officials formed an ‘early birth shock brigade’ to round up all nine women so labor could be induced.”).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Weisskopf, *supra* note 20.

⁵⁹ See Li, *supra* note 1, at 172.

⁶⁰ See *id.*

⁶¹ See case of Chen Li-May, *supra* note 53. ([The day her 9-month old fetus was aborted and killed], “Chen Li-May, who had been a lively girl, became a depressed woman. In the presence of others or by herself, she either rubs her swollen eyes that have no more tears shed, or talk to herself incoherently: ‘how good if my child is still alive!’ ”). *Id.*

race, sex, language, or religion.”⁶² In the half century since the foundation of the United Nations, issues such as the right to found a family,⁶³ the entitlement to protection of the family unit,⁶⁴ the rights to subsistence and education,⁶⁵ the rights to the highest attainable standards of physical and mental health,⁶⁶ and the reproductive and human rights of couples and women⁶⁷ have come to the forefront of international concern. As a result, there have been numerous United Nations conventions, covenants, and conferences, which have laid the groundwork for nations and individuals to follow in order to ensure the protection and promotion of these rights and freedoms.⁶⁸ A review of these documents clarifies the seriousness of the violations inherent in China’s programs.

⁶² U.N. CHARTER art.1.

⁶³ See Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., article 16, U.N. Doc. A/810 (1948).

⁶⁴ See *id.*; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, Annex 30, GAOR, 21st Sess., Supp. 16, at art. 10, *available at* http://www.unhchr.ch/html/menu3/b/a_cescr.htm; International Covenant on Civil and Political Rights, G.A. Res. 2200, Annex 21, GAOR, 21st Sess., Supp. 16, at art. 23, para. 1, *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm; Report of the Fourth World Conference on Women, Annex II, Platform for Action, Fourth World Conference on Women adopted at Beijing, Sept. 1995, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Platform for Action], at para. 29, *available at* http://www.un.org/esa/gopher_data/conf/fwcw/off/a—20.en.

⁶⁵ See International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at arts. 11, 13; Report of the Fourth World Conference on Women, Beijing, U.N. Doc. A/CONF.177/20 (1995), at para. 27.

⁶⁶ See International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 12, para. 1; Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, 85th Plenary Meeting (1993) at art. 3(f), *available at* [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?OpenDocument); Programme of Action, Report of the International Conference on Population and Development, Cairo, A/Conf.171/13 (18 October, 1994) [hereinafter Programme of Action of the ICPD] ch.2, principle 8, *available at* <http://www.undp.org/popin/icpd/conference/offeng/poa.html>.

⁶⁷ See Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter CEDAW], G.A. Res. 34/180, GAOR, 34th Sess., Supp. 46 at art. 16, *available at* http://www.unhchr.ch/refworld/refworld/legal/instrument/women/discr_e.htm; Report of the Ad Hoc Committee of the Whole of the Twenty-First Special Session of the General Assembly, Agenda Item 8, Addendum, Key Actions for the Further Implementation of the Programme of Action of the ICPD, U.N. Doc. A/S-21/5/Add.1 at preamble, para. 3 [hereinafter Key Actions].

⁶⁸ These include, among others, the International Covenant on Economic, Social and Cultural Rights, *supra* note 64; International Covenant on Civil and Political Rights, *supra* note 64; Fourth World Conference on Women, Beijing,;

The United Nations declared the family unit to be a basic right of all people,⁶⁹ and has further declared the right to protection of this unit.⁷⁰ The high level of importance and respect attached to the family unit can be seen in the basic definition of the family, which first appeared in the Universal Declaration of Human Rights and has appeared in more recent covenants such as the International Covenant on Economic, Social and Cultural Rights.⁷¹ These documents define the family as "the natural and fundamental group unit of society."⁷² They further accord that the family "is entitled to protection by society and state."⁷³ By specifically defining the family in this way, and defining in internationally recognized covenants the rights to the foundation and protection of the family,⁷⁴ it is implied that these rights are not always protected.

Related to, and perhaps stemming from, the recognition of the above basic rights, are the standards that the United Nations has defined concerning the rights of couples and individual women to control their own reproductive rights.⁷⁵ The Report of the International Conference on Population and Development [hereinafter ICPD] states that "[all] couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so."⁷⁶ This recognition was reaffirmed at the World Conference on Women in Beijing, and was included in the Report on the Conference as well as the Platform for Action arising from the Conference.⁷⁷

Declaration on the Elimination of Violence Against Women, *supra* note 66; International Conference on Population and Development, Cairo; and CEDAW, *supra* note 67.

⁶⁹ See Universal Declaration of Human Rights, *supra* note 63, art. 16.

⁷⁰ See Universal Declaration of Human Rights, *supra* note 63; International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 10, para. 1.

⁷¹ See Universal Declaration of Human Rights, *supra* note 63; International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 10, para. 1.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *supra* note 70 and accompanying text.

⁷⁵ See CEDAW, *supra* note 67, at art. 16, para. 1(e); Key Actions, *supra* note 67, at preamble, para. 3.

⁷⁶ Programme of Action of the ICPD, *supra* note 66, at Principle 8.

⁷⁷ See Platform for Action, *supra* note 64 at para. 223.

The United Nations has specifically addressed standards of human rights in relation to population/family planning programs, further defining the right to freely found a family.⁷⁸ This is of special importance when reflecting on programs such as those in China, since the U.N. has specified that coercion has no role to play in population or family planning programs.⁷⁹ Reproductive rights are to be allowed to all people free of discrimination or violence of any kind.⁸⁰ Forced abortion has been defined as an act of violence against women, along with forced sterilization and the involuntary use of contraceptives.⁸¹

Violations Within China's Population Control and Family Planning Programs

The P.R.C.s programs not only violate the above-mentioned basic rights by controlling the timing and spacing of children and forcing women to have abortions, submit to sterilization, and have IUDs inserted, but they also violate human rights standards through the various methods used to punish those who do not comply with the programs. These standards include the basic human rights and freedoms of all people,⁸² the rights of women to live free from discrimination and violence,⁸³ the rights of all to attain the highest standard of health,⁸⁴ the rights to subsistence,⁸⁵ and the rights of the child.⁸⁶

China's programs interfere with basic fundamental freedoms by extending punishments aimed at women who violate them to the

⁷⁸ See Key Actions, *supra* note 67, at preamble, paras. 3, 7.2, 7.3.

⁷⁹ See Programme of Action of the ICPD, *supra* note 66, at preamble, para. 7.12 ("[the] principle of informed free choice is essential to the long-term success of family-planning programmes. Any form of coercion has no part to play").

⁸⁰ See Platform for Action, *supra* note 64, at para. 223; Key Actions, *supra* note 67 at para. 3.

⁸¹ See Platform for Action, *supra* note 64, at para. 115.

⁸² See U.N. CHARTER art. 1, *supra* note 62.

⁸³ See generally CEDAW, *supra* note 67; Declaration on the Elimination of Violence Against Women, *supra* note 66.

⁸⁴ See International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 12; Report of the International Conference on Population and Development, U.N. Doc. A/CONF.171/13 (18 October, 1994) [hereinafter Report of the ICPD], at principle 8.

⁸⁵ See International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 11; Report of the ICPD, *supra* note 84, at principles 2, 6.

⁸⁶ See Convention on the Rights of the Child, Annex to G.A. Res. 44/25, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

members of her family.⁸⁷ If a woman is found to have acted out-of-plan, officials will search for her.⁸⁸ In the event that she cannot be found, it is common practice for officials to detain members of her family until she turns herself in.⁸⁹ The individuals thus detained have done nothing wrong, but can be held for long periods, with fines imposed for each day of holding.⁹⁰ In one case, where officials were unable to apprehend two women who had births out of plan, they seized their mothers and held them in the detention facility of the local planned birth office.⁹¹ They were not released until approximately two weeks later, when their daughters surrendered themselves.⁹² Another possible punishment is the "dismantling" of either the home of a woman in violation, or the home of her or her husband's family.⁹³ Gao Xiao Duan, in her statement before the Subcommittee on International Relations and Human Rights recalled,

I vividly remember one time that I led my subordinates to Yinglin Town Hospital to check on births. I found that two women . . . had extra-plan births. I led a planned birth supervision team composed of a dozen cadres and public security agents. With sledge hammers and heavy crowbars in hand, we went . . . and dismantled their houses.⁹⁴

⁸⁷ See testimony of Gao Xiao Duan, *supra* note 23, at 11–12.

⁸⁸ See statement of Gao Xiao Duan, *supra* note 11, at 32 ("[w]henver the [Planned Birth Office] calls for organizing 'planned-birth supervision teams,' the town head and communist party committee secretary will immediately order all organizations . . . to . . . organize . . . teams. They are they sent to villages or areas where problems are expected, either for routine door-to-door checking or for swift checking of local violators Planned-birth supervision teams usually exercise night raids, encircling suspected households with lightning speed.").

⁸⁹ See testimony of Gao Xiao Duan, *supra* note 23, at 11–12.

⁹⁰ See *id.*

⁹¹ See statement of Gao Xiao Duan, *supra* note 11, at 34.

⁹² See *id.*

⁹³ See *id.* See also Li, *supra* note 1, at 154, citing Amnesty International, *Women in China: Imprisoned and Abused for Dissent* 1 (1995).

⁹⁴ Statement of Gao Xiao Duan, *supra* note 11, at 34.

The rights of women to live free of violence,⁹⁵ torture⁹⁶ and discrimination⁹⁷ are violated by forced abortions, sterilizations, and contraceptive use, and by other forms of coercion and punishment imposed by China's programs. The physical and emotional pain and suffering these procedures cause are easily definable as violence or torture under the U.N. conventions.⁹⁸ Likewise, the health risks posed by late-term abortions,⁹⁹ the medical complications that can be caused by IUDs, and the magnification of these complications when doctors are unable to remove them,¹⁰⁰ can be considered acts of violence, torture or discrimination. It is also clearly possible that the types of coercion women face when they violate the plan have the ability to cause psychological harm. For example, the previously discussed monitoring of womens' menstrual cycles at the work place and attendant pressure from employers or coworkers in the event that they are late,¹⁰¹ the knowledge that their work unit may be penalized if they do not conform,¹⁰² and the possibility

⁹⁵ See Declaration on the Elimination of Violence Against Women, *supra* note 66. ("For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"). *Id.* at art. 1.

⁹⁶ See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter Torture Convention], U.N. Doc. A/RES/39/46, available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm ("For the purpose of this convention, the term "torture" means any act by which extreme pain or suffering, whether physical or mental, is intentionally inflicted upon a person for such purposes as . . . punishing him for an act . . . or intimidating him . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."). *Id.* at art. 1.

⁹⁷ See CEDAW, *supra* note 67. ("For the purpose of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms."). *Id.* at art. 1.

⁹⁸ See Torture Convention, *supra* note 96, at art. 1; CEDAW, *supra* note 67, at art. 1; Declaration on the Elimination of Violence Against Women, *supra* note 66, at art. 1.

⁹⁹ See case of Chen Li-May, *supra* note 53.

¹⁰⁰ See Li, *supra* note 1 at 171.

¹⁰¹ See Weisskopf, *supra* note 20.

¹⁰² See State Dept. Reports 1999, *supra* note 12, and 2001, *supra* note 2.

of demotion or loss of employment,¹⁰³ are likely to cause undue pressure and humiliation.

The rights of all people to subsistence,¹⁰⁴ including the rights of women to economic means, are internationally recognized.¹⁰⁵ Yet these rights are often withheld, manipulated, and taken away by officials enforcing China's programs. Punishments range from exceedingly burdensome fines¹⁰⁶ to the loss of employment,¹⁰⁷ disqualification for housing,¹⁰⁸ the inability to purchase food and other necessary items at ration prices,¹⁰⁹ revocation or inability to obtain a drivers' license,¹¹⁰ inability to be granted bank loans,¹¹¹ seizure of a portion of family land,¹¹² and the inability to obtain business licenses.¹¹³ Depending on the level of the violation, a woman or couple can be fined up to six times the previous year's income.¹¹⁴ The enforcement of these punishments does not take into consideration whether or not a person intentionally violated policy. Regardless, the potential harm caused by the punishment is disproportionate to the violation. Fining a woman for showing up one or more days late to an involuntary and invasive exam does not seem an efficient means of promoting responsible family planning.

¹⁰³ See State Dept. Reports 1999, *supra* note 12, and 2001, *supra* note 2. See also, Fujian Province Planned-Birth Regulations, *supra* note 47.

¹⁰⁴ See International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 11.

¹⁰⁵ See Report of the Fourth World Conference, Beijing, *supra* note 65, at para. 35.

¹⁰⁶ See statement of Gao Xiao Duan, *supra* note 22; Fujian Province Planned-Birth Regulations, *supra* note 47. See also State Dept. Report 2001, *supra* note 2.

¹⁰⁷ See State Dept. Report 2000, *supra* note 12.

¹⁰⁸ See Harry Wu, *supra* note 44, at 65.

¹⁰⁹ See Fujian Province Planned-Birth Regulations, *supra* note 47.

¹¹⁰ See Harry Wu, *supra* note 44.

¹¹¹ See *id.*

¹¹² See *supra* note 47.

¹¹³ See Harry Wu, *supra* note 44.

¹¹⁴ See Fujian Province Planned-Birth Regulations, *supra* note 47. See also State Dept. Rpt. 2000, *supra* note 35 ("[a]ccording to the State Family Planning Commission (SFPC) 1996 Family Planning Manual, over 24 million fines were assessed between 1985 and 1993 for children born outside family planning rules. In Quanzhou, Fujian Province, the fine for violating birth quotas is three times a couple's annual salary, to be paid over a 12 to 13 year period According to Guizhou provincial family planning regulations published in July 1998 [*a year after the start of the UNFPA's latest program — author*], families who exceed birth quotas are to be fined two to five times the per capita annual income of residents of their local area").

These measures do, however, interfere with the ability of humans to survive and function in society.

Children also suffer as a result of the punishment scheme of China's programs.¹¹⁵ The United Nations, in the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, recognized the rights of a child to be registered, have a name and nationality, receive health care, and receive an education.¹¹⁶ However, even though China, as a member state of the United Nations, ratified the Convention on the Rights of the Child, the punishments arising from a program violation extend to children and can take some of these rights away from them. In rural Fujian province, "women who refuse IUDs lose their right to grain rations and medical benefits for their first child."¹¹⁷ This is irrespective of whether the child is born within plan or out-of-plan. The educational resources of second or third children may be limited. "All other conditions being equal, technical schools . . . give preference to rural-area sole-children and children from second-daughter sterilization families."¹¹⁸ If one child is born out of plan, as in Quanzhou Municipality for example, "cereals and cooking oil are not supplied to the child at ration prices from the day of the child's birth to his/her 10th birthday."¹¹⁹ If two are born, this is extended to the 14th birthday.¹²⁰ These measures seem unusually cruel.

¹¹⁵ See Weisskopf, *supra* note 20 ("[a]t the Double Bridge Commune, [party chief Huang Zhigao] decided to make a 'negative example' of a 29-year-old woman named Meng who fled 200 miles to have her second child at an aunt's home. Huang, who lost his bonus because of Meng's clandestine delivery, took revenge when she returned. He stripped her family of half of the land given by the state for farming, fined her . . . and denied her the right to grain and cloth ration for the second child").

¹¹⁶ See Convention on the Rights of the Child, *supra* note 86, at art. 7, para. 1, art. 24, para. 1, and art. 28, para. 1; Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 13, paras. 1, 2.

¹¹⁷ Weisskopf, *supra* note 20.

¹¹⁸ *The View From Inside*, *supra* note 10, at 86 (Committee of Communist Party of China, Quanzhou Municipality Document, Quan-wei [1991] #15: Circular Notice on Obligations of Departments Directly Under the Municipality in Implementing "Fujian Province Planned-Birth Regulations").

¹¹⁹ *Id.* at 90.

¹²⁰ See *id.*

The United Nations has recognized the right of all people to attain the highest standard of health.¹²¹ This includes general and reproductive physical and emotional health.¹²² In the Report of the ICPD, reproductive health was defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes."¹²³ The Report of the Fourth World Conference on Women held in Beijing defined women's health in an even broader context by admitting that, "[women's] health . . . is determined by the social, political and economic context of their lives, as well as biology."¹²⁴ The social, political, economic, emotional, and physical pressures and punishments faced by so many women in the P.R.C. unfortunately show the reality behind these definitions and illustrate how grossly population control and family planning policies disregard these basic rights. Support of China's programs, the UNFPA's involvement, and the choices the United States must make regarding funding to the UNFPA must be considered within the framework of these issues.

III. THE UNITED NATIONS POPULATION FUND AND UNFPA PROGRAMS OF ASSISTANCE IN THE PEOPLE'S REPUBLIC OF CHINA

UNFPA — An Overview

The United Nations Population Fund is an internationally funded organization which provides funding to "developing countries and those with economies in transition" to aid with their reproductive health and family planning services.¹²⁵ Funding for the population assistance programs of the UNFPA comes not from the

¹²¹ See International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 12, para. 1 ("[t]he States Parties . . . recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."); Declaration on the Elimination of Violence Against Women, *supra* note 66, at art. 3(f); Report of the ICPD, *supra* note 84, at principle 8.

¹²² See International Covenant on Economic, Social and Cultural Rights, *supra* note 64, at art. 12, para. 1; Declaration on the Elimination of Violence Against Women, *supra* note 66, at art. 3(f); Report of the ICPD, *supra* note 84, at principle 8.

¹²³ Programme of Action of the ICPD, *supra* note 66, at para. 7.2.

¹²⁴ Report of the Fourth World Conference, Beijing, *supra* note 65.

¹²⁵ *UN Population Fund Welcomes U.S. House Vote to Restore Funding*, Note to Editors, Press Release, UNFPA (July 20, 1999) [hereinafter UNFPA Press Release], available at <http://www.unfpa.org>.

United Nations budget, but from voluntary contributions from the international community.¹²⁶ The UNFPA, in the spirit of human rights, the rights of women, and reproductive rights, works to aid the population and family planning programs of countries while remaining "committed to informed, voluntary choice The Fund only assists service delivery projects that rely on informed consent and offer quality care."¹²⁷ The assistance programs of the UNFPA are monitored according to the guidelines of the agency.¹²⁸ There is no question that the assistance the UNFPA offers is honorable and necessary, especially in light of the fact that the programs of reproductive health, population control, and family planning of numerous countries are lacking in terms of education, sanitary conditions, proper and accessible health care, counseling, and the like.¹²⁹ However, it is important to consider whether the goals of specific programs are being reached. The UNFPA's program of assistance to China is an area of special concern, especially since the program is their fourth with the Republic.¹³⁰

Four-Year, \$20,000,000 Program of Assistance to China

The UNFPA's latest program with China, which provides assistance to thirty-two counties in the country, was designed "to ensure respect for the human rights norms agreed to by 180 nations at the International Conference on Population and Development in 1994,"¹³¹ and with a goal of "[assisting] the Government of China in

¹²⁶ See *id.*

¹²⁷ *The State of the World Population — 1997*, at chapter 3, available at <http://www.unfpa.org/swp/1997/chapter 3.htm>.

¹²⁸ See UNFPA Proposed Projects and Programmes, UN Executive Board of the UNDP and of the UNFPA, 3d Reg. Sess. 1997: Recommendation by the Executive Director, Assistance to the Government of China at 10, DP/FPA/CP/196 at 10 [hereinafter Proposed Projects 1997] ("[in] accordance with UNFPA monitoring requirements, the proposed programme will have a mid-term review in 1999 and an end-of-programme evaluation. In addition, annual review meetings will be conducted to review the progress and experiences gained from the projects").

¹²⁹ See UNFPA Press Release: *Population Fund Sends Delivery Kits to Venezuela Flood Victims*, 1/13/2000 [hereinafter Venezuela], available at <http://www.unfpa.org/news/pressroom/2000/venezuela.htm>. Evaluation reports and finding of various UNFPA projects are also available at www.unfpa.org/publications/evaluation/index.htm.

¹³⁰ See Proposed Projects 1997, *supra* note 128 at 5. The UNFPA's previous programs with China were from 1981-1984, 1985-1989, and 1990-1995.

¹³¹ *Executive Director's Statement on the Withdrawal of U.S. Funding from UNFPA*, Press Release, UNFPA, available at <http://www.unfpa.org>. (Oct. 20,

implementing the ICPD Programme of Action.”¹³² The UNFPA wants to help strengthen more “client-centered reproductive services based on the principle of free and responsible choice”¹³³ by implementing client counseling, providing for the education of couples and individuals with regard to birth control methods, improving the accessibility of reproductive counseling and health/contraceptive services, and aiding in the improvement of contraceptive methods.¹³⁴ For example, they have aided some clinics in converting to the double-ringed copper IUD, which is safer than the steel-ringed IUD.¹³⁵ The methods by which these goals are to be implemented are enumerated in the UNFPA’s proposal of the project,¹³⁶ and seem well-thought-out and intentioned, with the hope that the work done in the 32 counties will later be applied at the national level.¹³⁷

In response to concerns raised by the U.S. Government regarding the program,¹³⁸ the UNFPA gave what it deemed to be sufficient reassurance by explaining the cooperative measures between the UNFPA and Chinese officials and by describing their plan to monitor the program.¹³⁹ Nafis Sadik, former Executive Director of the UNFPA¹⁴⁰, stated that they had

1998). The Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development states, in part, that “[governments], in collaboration with civil society, including non-governmental organizations, donors and the United Nations system, should: (a) Give high priority to reproductive and sexual health in the broader context of health-sector reform, including strengthening basic health systems . . . (b) Ensure that policies . . . respect all human rights . . . (e) . . . [ensure] free, voluntary and informed choices . . . (f) Ensure that sexual and reproductive health programmes [are] free of any coercion.” It also states that “Governments, in accordance with the Programme of Action, should take effective action to ensure the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information, education and means to do so.”) Key Actions, *supra* note 67, at para. 52.

¹³² See Proposed Projects 1997, *supra* note 128, at 7.

¹³³ See *id.* at 7-8.

¹³⁴ See *id.* at 7-9.

¹³⁵ See *id.* at 5.

¹³⁶ See *id.*

¹³⁷ See *id.* at 3.

¹³⁸ See *The View From Inside*, *supra* note 10, at 153.

¹³⁹ See *id.* at 146 (Response to Questions Raised by U.S. Government on the UNFPA Programme of Assistance to the Government of the People’s Republic of China (1998-2000)) [hereinafter UNFPA Response].

¹⁴⁰ Dr. Nafis Sadik left her position as Executive Director of the UNFPA in the fall of 2000. She is a highly respected member of the international community,

worked with the national Government [of China] to ensure that local authorities possessed a commitment to the ICPD . . . [that] [funds] will be released only after the UNFPA field office has received official written commitment from the provincial authorities that quotas and targets have been removed in each of the participating counties . . . [that] State Family Planning Commission [in China] has indicated that it is the Government's intention to gradually eliminate incentives and disincentives from the family planning programme . . . [that] the [Chinese] Government has agreed that the project will be open to monitoring and evaluation . . . [and] [frequent] and rigorous monitoring visits and activities will [be] undertaken by UNFPA and independent consultants.¹⁴¹

While it seems that the UNFPA has taken necessary precautions to ensure that their latest program of assistance to China will accord with human rights principles to afford safer, more extensive,

especially in regards to women's rights and population issues, and has played a great role in the recognition and implementation of the ICPD and its Programme of Action. Statements made in the Report on the third regular session 2000 of the Executive Board of the UNDP and UNFPA reflect as much. "The Vice-President of the Executive Board and representatives of Japan, speaking on behalf of the Western European and other States, expressed deep appreciation to Dr. Nafis Sadik for her outstanding work and strong commitment to population and development issues for the last three decades during which she had worked at the UNFPA, including 13 years she had served as its Executive Director [He] pointed out that it was Dr. Sadik who had made sure that population matters, and reproductive health in particular, came to the forefront of the international community's consciousness because they affected the quality of life of women, men and children in a fundamental manner. It was Dr. Sadik who had made sure that the issue of population was accorded the highest priority in international cooperation for development and humanitarian assistance Throughout the ICPD process, its follow-up, and the five-year review . . . she had played a vital role in the adoption and implementation of the ICPD Programme of Action." Executive Board of the UNDP and of the UNFPA, 1st Reg Sess. 2001: Report on the third regular session 2000, 25-29 September 2000, New York at 41, DP/2001/1. (I add this to emphasize the difficulty with which one may view the conundrum presented by the persistence of human rights violations in family planning programs in a country in which the UNFPA has continued to implement programs to better the situation of women and their families, especially when faced with the knowledge of the UNFPA and former Executive Director Sadik's dedication to the promotion of women's rights, healthy reproductive planning options, and the like — *author*.).

¹⁴¹ UNFPA Response, *supra* note 139, at 144-46.

and voluntary programs of reproductive health and education, the reality is not as clear.¹⁴² For example, Naomi Kitahra, Program Officer for China at UNFPA New York's Asia and Pacific Division, stated that the commitments of the authorities were received by the UNFPA, but the documents were strictly internal to the UNFPA.¹⁴³ Ms. Kitahra did provide, through her assistant Suchaturi Dirchall, a copy of the brochure the UNFPA and China's State Family Planning Commission allegedly gave to all households in the counties covered by the program.¹⁴⁴ Ms. Kitahra stated that it contained the relevant information regarding the assurances promised by the Chinese authorities and explained the program to families. However, after reading the brochure, which had to be translated from Chinese into English, there was no mention about these assurances and

¹⁴² See State Dept. Rpt. 2000, *supra* note 35 ("[In] order to meet the conditions established by the UNFPA for the implementation of the program, the SFPC [State Family Planning Commission] and the UNFPA jointly prepared a pamphlet for distribution to all households in the 32 project counties to inform them about the UNFPA program, including the requirement that birth quotas be eliminated in those counties. Although it is still too early for an overall assessment of this program, it is clear from visits to selected counties by foreign diplomats that progress in implementing the program has been mixed. Some counties have made appreciable progress in implementing the program, while others have made relatively little. Notable, some counties have informed the general public about the UNFPA program and have eliminated the system of strict, government-assigned birth quotas; other counties have not yet done so, or have only begun to do so"). See also State Dept. Report 2001, *supra* note 2, stating the same.

¹⁴³ I spoke with Ms. Kitahra on Friday, March 23, 2001 by telephone. While I must honor the off-the-record nature of part of the conversation, I can say that most of what she told me was propaganda-oriented. She spent much time speaking of the minimal funds they had for China's program due to the United States' policy. While understandable, and a concern this article addresses, this did not answer my inquiries regarding the status of the commitments the UNFPA was to receive from the authorities in the 32 counties in which the program is being implemented. I was told nothing to that effect, except for the statement that they did have the written assurances of the appropriate authorities, but they were internal documents that could not be made public. Last year, in late 2000, when I spoke to a gentleman in Congressman Christopher Smith's office, I was told that Congress had never received any documents relating to these assurances either. This leaves grave doubt as to whether or not this prerequisite to the release of funds in the latest UNFPA program was, in fact, fulfilled. While I, and I am sure many others, wish to believe that the truth is being told, when human lives are at stake, it is hard to take words on faith with so many barriers to actual proof.

¹⁴⁴ See UNFPA and [China] State Family Planning Commission, *Healthy Births/Plan for Giving Birth Healthfully*, CPR/98/PO1 (1999) [hereinafter *Healthy Birth brochure*]. For full text translation, see Appendix 1, attached (translated by Karen Wu).

there was a glaring inconsistency in tone and message regarding people's rights within the program.

The brochure is extremely repetitive, expressing the desire of China and the UNFPA to help people have "healthy births," and stressing the need for people to have the knowledge of how to have healthy births.¹⁴⁵ It also speaks of the "freedom to choose how many children one could have. There should be equal opportunity — men and women should have the choice to determine how many children they want to have. Stop forcing women to determine how many children to have."¹⁴⁶ Yet further on in the brochure, people are told, or rather warned, "[a]ccording to the law, you should only have one child. If the law says you should have one child and you have more than one — you are breaking the law."¹⁴⁷ When the possible punishments for breaking the law are known and feared by so many, it is difficult to assess the reaction to this statement. Hopefully, it has not deterred people from taking advantage of the positive aspects of the program. The question is, however, what the statement about breaking the law means, when it follows statements declaring that people should be free to choose how many children they have.

While the UNFPA had earlier stated that there would be no quotas or birth permits in the 32 counties chosen, it also expressed that "[people] may still be subject to a 'social compensation fee' if they decide to have more children than recommended by the policy."¹⁴⁸ Dr. Sadik did not elaborate on what the fees could be, or if they would be uniform in all the counties. Hypothetically, if the policy in a county recommends having only one child, couples essentially will have no choice. Since these fees have been known to impose a penalty of up to six times a couple or individual's previous yearly salary,¹⁴⁹ the UNFPA risks supporting, in effect, penalties.

It is also important to note that during the periods in which the UNFPA has been assisting China, and as recently as the period covered by the latest program, violations have continued to occur.¹⁵⁰ Whether or not they are occurring in the counties chosen for assis-

¹⁴⁵ See *id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See *The View From Inside*, *supra* note 10, at 145.

¹⁴⁹ See Weisskopf, *supra* note 20.

¹⁵⁰ See, e.g., No-More-Birth Allowed Notice for Villagers, *supra* note 14 and accompanying text.

tance in the latest effort, the goal of applying basic standards regarding population programs, family planning and reproductive health on a national level has not yet been achieved. The "assurances" of the Chinese Government that they will slowly eliminate quotas, incentives, and disincentives, while still applying penalty fees rings hollow based on the information available at present.¹⁵¹

IV. LEGISLATIVE TRENDS AND BUDGETARY MEASURES IN THE UNITED STATES WITH RESPECT TO POPULATION CONTROL AND FAMILY PLANNING PROGRAMS ABROAD

As a result of United States concern over human rights violations and the use of involuntary abortions, sterilizations, and contraceptive use in population control and family planning programs, Congress has repeatedly proposed and taken legislative action to ensure that funds are not applied to programs that include coercive measures. This concern has been realized in decisions regarding the apportionment of voluntary contribution funds to organizations such as the U.S. Agency for International Development (USAID) and the UNFPA in appropriations legislation.

Background

United States contributions to the United Nations Population Fund were first halted during the Reagan Administration.¹⁵² The Administration cut off a \$26 million dollar annual contribution, even though the UNFPA stated that they did not engage in support-

¹⁵¹ In all fairness, statements included in the UNFPA Report of the Executive Director for 1999 regarding the program must be noted. The report's comments about the program in China state that "[in] the 32 UNFPA-supported project counties, targets and quotas have been removed. Advocacy workshops have been carried out for key government policy makers and family planning officials to enhance an understanding of a client-oriented reproductive health approach. Training has been provided to service providers to emphasize the importance of quality of care. In addition, information, education and communication (IEC) materials have been distributed to each household in the counties in which UNFPA is working in order to disseminate information on the voluntary reproductive health approach." Executive Board of the UNDP and of the UNFPA, Annual Sess. 2000: UNFPA Report of the Executive Director For 1999 at 8, DP/FPA/2000/8 (Part II), May 5, 2000.

¹⁵² See Kathleen Teltsch, *Foundations Expand Family Planning Aid Abroad*, N.Y. TIMES, Sept. 5, 1988, §1, at 1, reprinted in 134 CONG. REC. (daily ed. Sept. 13, 1988).

ing coercive acts.¹⁵³ In 1985, Public Law 99-88, the “Kemp-Kasten amendment”¹⁵⁴ to the Foreign Assistance and Related Programs Appropriations Act of 1985, went into effect.¹⁵⁵ The amendment to the section of the Act entitled “Population Development and Assistance” reads “[none] of the funds made available in this bill nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.”¹⁵⁶ Although guidelines for the President’s determination were not defined, this amendment was an effort by the government to turn concern into legislation, designed to protect against certain human rights violations.

In the past fifteen-plus years, the United States Legislature has continued to raise the issue of coercive programs, especially those in China, and has voiced its concern over United States voluntary contributions to organizations that fund population and family planning programs.¹⁵⁷ Several bill proposals have outlined these

¹⁵³ *See id.*

¹⁵⁴ Larry Nowels, Population Assistance and Family Planning Programs: Issues for Congress, Issue Brief No. IB96026 (Congressional Research Service, Feb. 21, 2001) [hereinafter CRS Issue Brief], available at <http://www.cnle.org/nle/gen-7>.

¹⁵⁵ *See* H.R. 2577, 99th Cong. (1985).

¹⁵⁶ *Id.*

¹⁵⁷ *See* 131 CONG. REC. H5218-01 (daily ed. June 27, 1985). During the first session of the Proceedings and Debates of the 99th Congress, Congressman Kemp addressed the issue of voluntary contributions to these programs. “As ranking member of the Foreign Operations Subcommittee of the Appropriations Committee, I support U.S. assistance to voluntary family planning programs worldwide. But the use of U.S. taxpayer funds by organizations that refuse to end their alliance with programs of coerced abortion and forced sterilization threaten the integrity of our commitment to providing voluntary family planning services worldwide U.S. taxpayers provide one-third of the budget for the United Nations Fund for Population Activities. It, in turn, will provide \$100 million between 1980 and 1989 to the People’s Republic of China, a significant portion of the PRC’s budget to population control. These funds are used at every level of the Chinese program [The] UNFPA Program cannot be disentangled from the pervasive coercion of the system and [that] even if it could, the shadow on the PRC Program would pose difficulties. Hence I conclude that the United States should take strong action to dissociate itself from the China program.” *Id.* *See also* 139 CONG. REC. E1093-01 (daily ed. April 28, 1993). In an extension of remarks during the first session of the 103rd Congress, Congressman Christopher Smith stated, in part, “[It] is profoundly disturbing that the United Nations Population Fund continues to engage in an international coverup of China’s heinous practices. Their top officials continue to publicly praise China’s program as totally voluntary despite mountains

concerns, and legislation has been enacted setting limits on the programs to which the United States can appropriate funds.

Legislative Concern and Resultant Acts

In March of 1989, Congress expressed its condemnation of programs such as those in China.¹⁵⁸ The House of Representatives, with the Senate concurring, "strongly [condemned] . . . the one-child-per-family policy [of the P.R.C.] . . . that relies on coercion, economic penalties, and forced abortions . . . [and] a repressive 'birth quota' system."¹⁵⁹ In 1999, the House of Representatives passed a resolution that resolved, in part, that "it is the sense of the House of Representatives that no family planning projects should include payment of incentives, bribes, gratuities, or financial reward."¹⁶⁰ This consistent concern held by the United States Congress regarding certain coercive and harmful acts is reflected in current law regarding the appropriation of funds for the fiscal year ending September 30, 2001.¹⁶¹

House Resolution 4811,¹⁶² a Bill Making Appropriations for Foreign Operations, Export Financing, and Related Programs for the Fiscal Year ending September 30, 2001 was signed into law in the fall of 2000 as the United States Budget for Fiscal Year 2001.¹⁶³ H.R. 4811 enacted into law provisions of H.R. 5526, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001.¹⁶⁴ These provisions included prohibitions on funds available to the Agency for International Development for sustainable development assistance.¹⁶⁵ The language, taken from H.R. 5526 and included in the Budget, provides that:

of evidence to the contrary . . . Mr. Speaker, the UNFPA's actions made a mockery of United Nations proclamations on human rights. Unless the UNFPA can promptly prevail on China to cease their barbaric attacks on women and children, they should completely disassociate themselves from China's program. President Clinton, for his part, should reverse his decision to provide U.S. funds to the UNFPA unless these conditions are met." *Id.*

¹⁵⁸ See 135 CONG. REC. E927-01 (daily ed. March 22, 1989).

¹⁵⁹ *Id.*

¹⁶⁰ 106 H. RES. 118, 106th Cong. (1999).

¹⁶¹ See Pub. L. No. 106-429 [hereinafter FY2001 Budget].

¹⁶² See H.R. 4811, 106th Cong. (2000).

¹⁶³ See FY2001 Budget, *supra* note 161.

¹⁶⁴ See H.R. 5526, 106th Cong. (2000) (enacted).

¹⁶⁵ See *id.*

[None] of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further, [t]hat . . . funds shall be available only to voluntary family planning projects.¹⁶⁶

The section further lists several requirements that these projects must meet in order to receive funding.¹⁶⁷ For example, there must not be any quotas or “numerical targets” involved and “incentives, bribes, gratuities, or financial reward” may not be given to program personnel or participants.¹⁶⁸ Furthermore, “the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual’s decision not to accept family planning services.”¹⁶⁹

A separate provision, Section 585 of H.R. 5526, enacted as Section 599C of the Budget, specifically addresses contributions of funds to the UNFPA.¹⁷⁰ The United States Government has specifically prohibited funding to the organization unless the funds are kept in a separate account.¹⁷¹ Most importantly, Section 599C (2), entitled “Prohibition on Use of Funds in China,” specifically states, “[none] of the funds made available under ‘International Organizations and Programs’ may be made available for the UNFPA for a country program in the People’s Republic of China.”¹⁷² Furthermore, if it is reported to Congress that the UNFPA does plan to spend U.S. funds in a program in China, the amount of those funds will be withheld by Congress the following fiscal year.¹⁷³ That these

¹⁶⁶ See *id.* See also FY2001 Budget, *supra* note 161, at 1002.

¹⁶⁷ See *id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See H.R. 5526, *supra* note 164. See also FY2001 Budget, *supra* note 161 at 1047.

¹⁷¹ See FY2001 Budget, *supra* note 161, at 1047.

¹⁷² *Id.*

¹⁷³ See *id.* (“Report to the Congress and Withholding of Funds — (A) . . . the Secretary of State shall submit a report to the appropriate congressional committees indicating the amount of funds that the United Nations Population Fund is budgeting for the year in which the report is submitted for a country program in the People’s Republic of China. (B) If a report under subparagraph (A) indicates

provisions are now law is undoubtedly important of its own accord. Equally important is the fact that these provisions existed, verbatim, in the United States Budget for Fiscal Year 2000.¹⁷⁴

[None] of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further . . . [Funds] shall be available only to voluntary family planning projects which offer, either directly or through referral to or information about access to, a broad range of family planning methods and services, and that any such voluntary family planning project shall meet the following requirements: (1) service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning . . . (2) the project shall not include payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota . . . (3) the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services.¹⁷⁵

The fact that the provisions discussed above have survived the legislative process and been part of more than one federal budget, essentially unchanged, is an important observation to be made.

that the United Nations Population Fund plans to spend funds for a country program in the People's Republic of China in the year covered by the report, then the amount of such funds that the UNFPA plans to spend in the People's Republic of China shall be deducted from the funds made available to the UNFPA after March 1 for obligation for the remainder of the fiscal year in which the report is submitted"). *Id.*

¹⁷⁴ See Pub. L. No. 106-113, 113 Stat. 1501 [hereinafter FY2000 Budget].

¹⁷⁵ *Id.*

Herein lies the intention of the United States Government to withhold the means to aid programs that have not eliminated coercive measures, even if the organizations to which the funding would flow do not themselves actively participate in these violative practices.

The crux of the debate over appropriations does not include any controversy over concern for human rights protection. Rather, the debate centers on the impact withholding these funds has in light of the substantial need for improved family planning throughout the world. While it is clear that the concern over violations of human rights in, for example, national family planning and population control programs such as China's, is well-founded,¹⁷⁶ it is less clear whether or not addressing the issue through funding restrictions is appropriate, rather than a separate source of harm.

V. A NECESSARY CHANGE

Although this article is not directly about the global gag rule,¹⁷⁷ a brief comment about it cannot be excluded, as it is a large part of the restrictions to family planning funding, existing both as a

¹⁷⁶ See, e.g., *supra* pp. 15–20.

¹⁷⁷ The so-called global gag rule stems from action taken by the Reagan Administration in 1984, when funding was banned to any organization if any of their funding, regardless of the source, was spent on abortion. See, e.g., *EU Chief attacks Bush on Abortion Cash* (Jan. 23, 2001) [hereinafter *Abortion Cash*], available at CNN.Com, <http://www.cnn.com/2001/WORLD/europe/01/23/bush.abortion>. This action followed concern voiced in 1984 at a conference on international population, where James L. Buckley, the U.S. delegate to the conference, stated that funding would be stopped unless the U.S. "received assurances that the [UNFPA] would not engage in abortion or 'coercive family planning programs.'" See Teltsch, *supra* note 152. Although the concern originally encompassed coercive practices, the rule, otherwise known as the Mexico City Policy, has become centered on withholding funding from organizations if abortion or abortion education is in any way a part of their programs. In 1993, former President Clinton rescinded the gag rule and restored funding, for example, to the UNFPA with the caveat that the restriction on funding to their China program continue. See, e.g., Population Action International, *Why Population Matters: The U.S. Population Assistance Program*, available at http://www.populationaction.org/why_pop/whyassistance.htm. Unfortunately, as far as the gag rule is concerned, the issue has become one of abortion, fought over between pro-life and pro-choice advocates. This year, in a highly criticized move, newly-elected President George W. Bush reinstated the policy as his first executive order. This means that at present, the U.S. cannot use federal aid to help fund organizations that use any of their monies for abortion services. See, e.g., Population Action International, *Bush Budget Blueprint Silent on Overseas Family Planning* (March 9, 2001), available at http://www.population-action.org/news/views_030901.htm; PlanetWire.Org, *Congressman Crowley De-*

separate section in the Budget, and as part of the restrictive language regarding coercive actions.¹⁷⁸ Section 599D of the current Budget, entitled "Authorization for Population Planning,"¹⁷⁹ includes subsection (b) (1), "Restriction on Assistance to Foreign Organizations That Perform or Actively Promote Abortions."¹⁸⁰ The restriction states, in part, that:

. . . no funds appropriated by title II of this Act for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.¹⁸¹

The section of the budget addressing funding to the Agency for International Development for sustainable development assistance, both this year and last, includes language that prohibits funding that "may be used to pay for the performance of abortion as a method of family planning."¹⁸² This language is mixed in the same paragraph that discusses, as quoted above, restrictions regarding coercive abortions and sterilizations, quota systems, and the like.¹⁸³

These two issues cannot be intermingled. Concerns about the imposition of forceful human rights abuses upon innocent men and women within family planning programs are far different than the concern of conservative America over the issue of abortion. This is especially so when viewed as a part of the Budget with its emphasis on voluntary versus involuntary measures. Nowhere in the language quoted above is the term "abortion" conditioned with the adjective "involuntary." Thus, the United States is conditioning funding to family planning programs, in part, on the prohibition of

nounces Bush's Return to Limits on Access to Family Planning (Jan 23, 2001), available at <http://www.planetwire.org/details/1176>.

¹⁷⁸ See FY2001 Budget, *supra* note 161, at 1048, 1002.

¹⁷⁹ See FY2001 Budget, *supra* note 161, at 1048.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² FY2001 Budget, *supra* note 161, at 1002.

¹⁸³ See *id.*

voluntary acts of abortion, carried out by women even in countries where abortion is legal. It is not difficult to propose that this restriction be removed, as it is not based upon a concern over protecting individuals' human rights against officially-sanctioned abuses, but is based on the "moral" debate over abortion, which ignores the realities facing women today.

Recently, members of Congress and others have expressed concern over this "gag" language in the U.S. Budget, and the resulting harm from the restriction. Part of the concern stems from the fact that the restriction was a result of a contemptible congressional compromise. "[The] White House accepted the family planning conditions in exchange for congressional support of the payment of nearly \$1 billion owed by the United States to the United Nations."¹⁸⁴ The greater concern, however, is based on the overwhelming need of family planning funds and the belief by many that conditioning these funds on how organizations use the money in their programs is unacceptable. For example, Congressman Earl Blumenauer of Oregon expressed his concern in an extension of remarks in the House this past July, when H.R. 4811 was under consideration by Congress:

[Today] I cosponsored an amendment to withdraw the global "gag" language from the Foreign Operations Appropriations bill. The language denies U.S. family planning funding to any overseas organization that uses its own non-U.S. funds to provide abortions services. The family planning dollars appropriated in this bill are critically important to the prevention [of] maternal and child deaths and the continued spread of STDs. Congress should not make the allocation of this life saving funding contingent on how a foreign organization chooses to spend its own dollars.¹⁸⁵

While those addressing the issue of family planning funding from a human rights standpoint may have an easy time agreeing

¹⁸⁴ CRS Issue Brief, *supra* note 154, at 5.

¹⁸⁵ Congressman Earl Blumenauer, Extension of Remarks in the House of Representatives, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (July 13, 2000).

that the gag rule should be reversed,¹⁸⁶ the more complicated question is what to do with funding restrictions based on coercive practices within family planning programs.

VI. AND WHAT ABOUT THE REST:
IS THERE A SIMPLE SOLUTION?

While the United States has attempted to uphold a commitment to the protection of human rights and voluntarism in respect to population and family planning programs, there is reflected in a bill recently introduced in the House and Senate a sense that a reinstatement of funding without restrictions in the face of the realities surrounding the needs of women, children, and families abroad is necessary. In 2000, both the Senate and the House introduced a bill that would provide international family planning funding, raising budgetary levels to that seen in 1995 and loosening restrictions applicable to these funds.¹⁸⁷ The bill, entitled Saving Women's Lives Through International Family Planning Act of 2000, recognizes the pressing need for proper family planning resources:

The Congress finds the following: (1) International family planning funds provide assistance that saves the lives of women by providing vital reproductive health care, including family planning and maternal health programs that include prenatal, postpartum, HIV/AIDS, and other sexually transmitted disease educa-

¹⁸⁶ See, e.g., *Abortion Cash*, *supra* note 177, quoting Director General of the International Planned Parenthood Federation Ingar Brueggemann as saying, "[t]o place restrictions on family planning choices disempowers women and men and undermines their efforts to extricate themselves from poverty. . . . The Mexico City Policy has cost many lives and actually increased to a large degree the number of unintended pregnancies and illegal, unsafe abortions causing death and disability." Also, the rule has been seen as undemocratic, in its differential treatment of abortion in the national versus international arena. See *id.*, quoting economist Dr. Sheila Ogilvie ("Because abortion is legal for American women it is a little bit inconsistent that the American government is, in a sense, forbidding women in poor countries something which women in the United States are allowed to do.").

¹⁸⁷ See Saving Women's Lives Through International Family Planning Act of 2000, H.R. 3634, 106th Congress, 2d Sess. (2000), (the bill was introduced in the House Feb. 10, 2000 and was referred to the Subcommittee on International Operations and Human Rights on March 14, 2000); S. 2380, 106th Congress, 2d Sess. (2000) [hereinafter *Saving Women's Lives Act*], (the bill was introduced in the Senate April 6, 2000 and was later referred to the Committee on Foreign Relations).

tion that results in safe pregnancies and safe motherhood . . . (4) The health of the planet is connected to the health of women and their families. . . International family planning improves the ability of families worldwide to manage their lives and their natural resources more sustainably. (6) Voluntary family planning services allow women and men to exercise their fundamental human right to plan the size of their families and ensure that every pregnancy is planned and every child is wanted . . . (7) At the [ICPD] in 1994, it was estimated that making quality family planning and related health services available to all in need of such planning and services would cost \$17,000,000,000 in the year 2000. The United States and other donor countries agreed to provide 1/3 of those funds. Based on the size of its economy, the United States share of the total donor population assistance should be almost \$1,900,000,000 for fiscal year 2001. While falling short of that funding goal, restoring funding . . . to fiscal year 1995 levels would be a significant step toward ensuring access to family planning and reproductive health care for couples around the world.¹⁸⁸

Not only does the bill suggest raising funding levels in general to that of FY1995, it suggest making \$35,000,000 available specifically to the UNFPA.¹⁸⁹ This suggests a \$10,000,000 increase in funding to the UNFPA from the level appropriated in FY2000, and actually appropriated in FY2001.¹⁹⁰ The bill also includes a section entitled "Eligibility of Nongovernmental and Multilateral Organizations for Population Planning Assistance" that would ensure that eligibility for these organizations would be no stricter than requirements applied to foreign governments for the same assistance.¹⁹¹

¹⁸⁸ *Id.* The 1995 level of funding for family planning for both bilateral aid and UNFPA funding reached \$577 million. See CRS Issue Brief, *supra* note 154, at 8. Contrast this with the level of funding in FY2000, which reached \$384 million, and the level in FY2001, which reached \$450 million. See *id.* The Saving Women's Lives Through International Family Planning Act of 2000 specifically suggested that \$541,600,000 be made available for population planning activities and assistance. See Saving Women's Lives Act, *supra* note 187.

¹⁸⁹ See Saving Women's Lives Act, *supra* note 187.

¹⁹⁰ See FY2000 Budget, *supra* note 174; H.R. 5526, *supra* note 164.

¹⁹¹ See Saving Women's Lives Act, *supra* note 187.

The question still remains, though, of how this will effect restrictions based on coercive measures. The proposed bill did not mention involuntary measures, though it does speak of voluntary planning.¹⁹² So the question remains — should the United States reaffirm funding restrictions based on the existence of coercive family planning measures or should the United States restore funding without restrictions, allowing organizations such as the UNFPA to utilize U.S. funds in programs in countries such as China?

CONCLUSION

It is unquestionable that gross human rights violations are presently occurring within population/family planning programs in the People's Republic of China. As recently as 1998, informant systems have been set up.¹⁹³ Documents show that as recently as December 1997, couples still received "no-more-birth-allowed" notices threatening punishment in the event of a violation.¹⁹⁴ There is documentation that in 1996, abortions were still being performed in the ninth month of pregnancy.¹⁹⁵ The Chinese government seems to be making little effort to halt these activities.¹⁹⁶

The UNFPA's latest program involves working with local county professionals and officials, as well as the Ministry of Health and the State Family Planning Commission.¹⁹⁷ However, as of yet, there is no available documentation supporting the claims that cooperation on all levels has been reached.¹⁹⁸ Without this reassur-

¹⁹² See *id.*

¹⁹³ See *The View From Inside*, *supra* note 12, at 116 [Quanzhou City Planned-Birth Leadership Group "Circular Notice on Setting up an Informing System Based on Rewards, Feb. 23, 1998].

¹⁹⁴ See *id.* at 40 [Notice: No-More-Birth-Allowed Notice for Villagers] sent to Yu Tian Jiao and Mao Li Zheng, which states "[should] you bend on extra-plan birth/s, you shall be handled seriously in accordance with related regulations."

¹⁹⁵ See *supra* note 61.

¹⁹⁶ See *infra* p. 23, at n.141.

¹⁹⁷ See Proposed Projects 1997, *supra* note 128, at 8 ("[i]n addition to working directly at the county level, the programme will provide direct support at the central level to the State Family Planning Commission (SFPC) and the Ministry of Health for the development and revision of standard service delivery protocols for a broad range of reproductive health services At the county level the proposed programme will work with the existing reproductive health service delivery institutions at the field level — SFPC, Ministry of Health and CFPA — by training field staff health professionals in technical and clinical skills, counseling and management.").

¹⁹⁸ See *supra* note 143 and accompanying text.

ance, there is no factual basis to believe that the project is functioning in a manner respectful of human rights. This leaves open, in fact, the questions regarding the implementation of quotas and incentives. Furthermore, the State Family Planning Commission, with whom the UNFPA is working, has only related an "intention" to "gradually eliminate incentives and disincentives."¹⁹⁹ Coupled with the fact that fines may still be imposed on couples for having an undefined number of children,²⁰⁰ when the program is supposed to allow for free choice in the matter, the UNFPA seems to be making a dangerous compromise in order to continue its work.

Still, it is important to recognize that the UNFPA's work to improve family planning programs and reproductive health is noble, that they run successful programs, and that the work they do and the assistance they offer is necessary.²⁰¹ It is also notable that improvements in China's program have been acknowledged.²⁰² However, when these programs are implemented in countries such as China, where measures that violate human rights are still widespread, the United States has a duty to consider carefully its contribution of funds. The fact that for the past fifteen years, the subject of these planning programs and their use of forced abortions, involuntary sterilizations and contraceptive use, quotas, and incentives has continuously been a topic of Congressional debate²⁰³ and legislative acts,²⁰⁴ along with the fact that abuses continue in China lends credibility to concern. One of these concerns pertains to the idea that if the United States funds programs such as that in China, through organizations such as the UNFPA, it will be mistaken as a sign that our government sanctions the abusive measures that do still exist. Certainly, regardless of the fact that the UNFPA claims to have an ongoing dialogue with the Chinese government regarding changing the nation's program to a purely voluntary one in the future,²⁰⁵ it is difficult to overlook the fact that for all the years the UNFPA has operated programs in China, and for all the good they have accomplished, widespread abuse still exists. Thus, the ques-

¹⁹⁹ UNFPA Response, *supra* note 139, at 145.

²⁰⁰ See Weisskopf, *supra* note 20.

²⁰¹ See Venezuela, *supra* note 129.

²⁰² See, e.g., *supra* note 143 and accompanying text.

²⁰³ See, e.g., *supra* notes 158-161.

²⁰⁴ See FY2000 Budget, *supra* note 174; FY2001 Budget, *supra* note 161.

²⁰⁵ This is one of the points Ms. Kitahra stressed when I spoke to her recently.

tion arises, is it acceptable to fund programs in the face of continued human rights violations committed under the watch of governments these programs coordinate with in order to achieve a greater good, or does helping a portion of society while officials freely abuse individuals and families outside of UNFPA and other organization-sponsored programs cause more harm in the long run? This question is extremely difficult to answer when faced with the overwhelming need for international family planning assistance.

Until there is a factual basis upon which the UNFPA or any other organization can claim that widespread, officially sanctioned and promoted human rights violations are not occurring in population control/family planning programs, the United States should very carefully monitor contributions available to them. If the United States is to support the rights of women, children, and couples to health, subsistence, voluntary reproductive choice, and all other basic internationally recognized human rights,²⁰⁶ it cannot fund programs such as that of the People's Republic of China without specific assurances. In order to free up funding to family planning organizations and programs while still addressing human rights concerns, the only answer that seems viable is to remove the current restrictions to funding, especially the gag rule, and instead add a new qualification.

The U.S. should condition funding based on actual, documented, and verifiable assurances from program coordinators within the organizations to be funded and from officials within the countries being aided that no coercive measures will be utilized, no quotas or targets will be implemented, and no incentives will be given in the programs being funded. The key is voluntariness. And with reports continuing to exist of human rights abuses within family planning programs abroad, such as in China,²⁰⁷ it becomes difficult to believe shallow assurances made by organizations such as the UNFPA without documentation to back them up. If the United States continues to condition funding as strictly as it does at pre-

²⁰⁶ These include those discussed herein in reference to the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Fourth World Conference on Women, Beijing; the Declaration on the Elimination of Violence Against Women; CEDAW; the Convention on the Rights of the Child; and the Torture Convention, among others.

²⁰⁷ See State Dept. Report 2001, *supra* note 2.

sent, it will risk adding to the harms created when there is a lack of proper family planning care and education in the international arena. However, if the United States blindly funds family planning organizations and programs without any qualifications and without researching the existence of human rights abuses, it would, in effect, be funding the dismantling of homes, the physically and emotionally crippling effects of forced abortions and sterilizations, the loss of employment of innocent people, and a myriad of other actions and effects discussed. The U.S. government must strike a balance between aiding women and families around the world through reproductive health care and education, and protecting the same people from official abuses. In short, we must continue to balance the interests of lives in the cradle of human rights. This is clearly a daunting task.

Tara A. Gellman

APPENDIX

UNFPA/SFPC PAMPHLET TO FAMILIES IN COUNTIES
COVERED BY LATEST PROGRAM*Translation by Karen Wu*COVER: HEALTHY BIRTHS/PLAN FOR GIVING
BIRTH HEALTHFULLY

It is China and UNFPA's plan for everyone to have a healthy birth. This is the fourth year that China and UNFPA has worked together. We hope that you and your family are trying to participate in these activities.

Our goal is to have healthier babies born. To have a healthy baby — people should follow our advice and knowledge. We want women to have the knowledge in order to have a healthy baby. We want people to be responsible in planning the birth of their child.

We want to work together with you to plan a healthy birth. In the next generation, there will be a plan to have healthy births in China. The goal for the next generation is the same. People in the world should have a choice in when to have a baby and how many children to have. There are fifteen plans (guidelines) for having healthy births. There should be freedom to choose how many children one could have. There should be equal opportunity — men and women should have the choice to determine how many children they want to have. Stop forcing women to determine how many children to have. All women should be educated about this.

All people should have this knowledge. Everyone should be able to express their feelings on this subject. By having this knowledge the economy and community should improve. Everybody needs to participate and learn about this to reduce poverty. Each county needs to participate in order to help itself. Each county needs to respect its people, their thoughts, the freedom of religion and education.

Healthy births are a good plan and very beneficial. Need to allow everybody to decide on their own independence on how many children they want to have and when to have them — allow people to make their own decision. We want everybody to be healthy, safe and ensure that people can support and take care of their children.

Allow people to choose on their own. According to the law, you should only have one child. If the law says you should have one child and you have more than one — you are breaking the law. The most important thing is that women are healthy and that they have healthy births.

There are 32 items/things that China and UNFPA guarantees. People need to be responsible for healthy births; to plan for the births; to be safe; have knowledge and participate in activities for the economy; education; a healthy birth plan; improvements in the plan by learning more about healthy births. Do not force women to have or not have children. We should stop limiting how many children people have.

After reading this pamphlet — let your friends and family know about the healthy birth plan activities.

If you want more information, contact our organization.

June 1999.

